

109TH CONGRESS
1ST SESSION

H. R. 1278

To amend title 11 of the United States Code to limit the exemption for
asset protection trusts.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2005

Mr. EMANUEL (for himself, Mr. DELAHUNT, Mr. WATT, and Mr. CONYERS)
introduced the following bill; which was referred to the Committee on the
Judiciary

A BILL

To amend title 11 of the United States Code to limit the
exemption for asset protection trusts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Billionaire’s Loophole
5 Elimination Act”.

6 **SEC. 2. ASSET PROTECTION TRUSTS.**

7 Section 548 of title 11, United States Code, is
8 amended by adding at the end the following:

9 “(e)(1) The trustee may avoid a transfer of an inter-
10 est of the debtor in property made by an individual debtor

1 within 10 years before the date of the filing of the petition
2 to an asset protection trust if the amount of the transfer
3 or the aggregate amount of all transfers to the asset pro-
4 tection trust within such 10-year period exceeds \$125,000,
5 to the extent that the debtor's beneficial interest in the
6 trust does not become property of the estate by reason
7 of section 541(c)(2).

8 “(2) An asset protection trust is a trust settled by
9 the debtor, in which the debtor has a direct or indirect
10 beneficial interest or under which the trustee may dis-
11 tribute property to or for the benefit of the debtor, and
12 as to which a restriction on the voluntary or involuntary
13 transfer of the debtor's beneficial interest in the trust is
14 enforceable under applicable nonbankruptcy law. For pur-
15 poses of this subsection, the following are not asset protec-
16 tion trusts:

17 “(A) Retirement funds to the extent that those
18 funds are in a fund or account that is exempt from
19 taxation under section 401, 403, 408, 408A, 414,
20 457, or 501(a) of the Internal Revenue Code of
21 1986.

22 “(B) Charitable trusts.

1 “(C) Qualified trusts under section 529 of the
2 Internal Revenue Code of 1986, and other edu-
3 cational trusts, funds, or accounts.”.

○